

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 517

THE NATIONAL BOARD OF THE YOUNG MEN'S CHRISTIAN ASSOCIATIONS, THE SOJOURNER'S LODGE, MASONIC TEMPLE, AND THE COMMERCE AND INDUSTRY INSURANCE COMPANY, PETITIONERS

v.

UNITED STATES OF AMERICA

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF CLAIMS**

**MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION**

In January 1964, rioting mobs of citizens of the Republic of Panama entered the Canal Zone, attacking and killing United States and Panamanian citizens and burning and looting property. When the number and force of the mob attacks overwhelmed the local police, the Commander of the Armed Forces in the Canal Zone assumed responsibility for quelling the

riot (Pet. App. 2a-3a). As part of that effort, troops were sent to Cristobal, on the Atlantic side, to drive rioters out and to seal that border from further encroachment. When they arrived, the troops drove rioters out of the YMCA building and the Masonic Temple, across adjacent Bolivar Avenue, and into the Republic of Panama. The rioters had seriously damaged those buildings and property in them. On the street in front of the buildings, the troops were confronted by a mob of about 3,000 people, which began to assault them with sniper fire, rocks, bricks, plate glass, and Molotov cocktails. One soldier was killed and two were wounded by sniper fire, and many others were injured by flying debris and Molotov cocktails (Pet. App. 3a-4a). In view of the deadly sniper fire, which the troops were ordered not to return, the commanding officer directed his men to withdraw from the street and take up positions in the YMCA building, the Masonic Temple, and the adjoining Old Commissary Building. These buildings were set afire by Molotov cocktails, forcing the troops to evacuate them after 14 hours (except for an observation post on the top floor of the Masonic Temple) and take up positions behind sandbags in a parking lot at the rear of the buildings. During the battle, two more American soldiers were killed and 10 more were wounded by sniper fire. After a siege lasting more than three days, the mobs were finally dispersed, leaving extensive damage to public and private property throughout the Canal Zone (Pet. App. 4a-6a).

Petitioners sued the United States to recover just compensation in the amount of \$245,192—the cost of

damages to the YMCA Building and the Masonic Temple which allegedly occurred after the Army entered the buildings—claiming that there had been an appropriation of private property for public use (Pet. App. 5a, 7a). The Court of Claims (one judge dissenting) denied recovery, holding that the temporary use of the buildings to meet an emergency threatening widespread devastation was not a compensable appropriation (Pet. App. 10a).

We submit that the decision below is correct. The troops were not sent to occupy the buildings; they were sent to expel the mob from occupying, looting, and damaging them. Equivalent or greater damage would likely have occurred if the troops had not intervened. In the absence of a statute, no government indemnifies those who suffer losses from a mob or "at the hands of a public enemy, or from intestine commotions or rebellion." *Louisiana v. Mayor of New Orleans*, 109 U.S. 285, 291 (Bradley, J., concurring); see *United States v. Pacific Railroad*, 120 U.S. 227, 234-235. A destruction of private property by hostile forces (organized or not) is not a loss for which the government owes compensation.

The fact that federal troops were summoned to quell the riot here does not suggest a different result. At all times, the soldiers were engaged in a pitched battle, involving great danger to themselves, against a force which threatened severe destruction of property and lives. The property which they stood on or behind—first the street, then the buildings, then the fortified parking lot—was not occupied or appropriated for federal use in any sense except for the immediate, tem-

porary defense of the state and the property of its citizens. The buildings were entered by the Army as an incident to its task of ejecting looters and rioters, preventing their reentry, and restoring order in the Canal Zone. Under the teaching of *United States v. Pacific Railroad*, *supra*, and *United States v. Caltex, Inc.*, 344 U.S. 149, compulsive use or destruction of property in such circumstances is not a compensable appropriation. As the Court said of *Pacific Railroad* in *Caltex*, “* * * the common law had long recognized that in times of imminent peril—such as when fire threatened a whole community—the sovereign could, with impunity, destroy the property of a few that the property of many and the lives of many more could be saved” (344 U.S. at 154). The fact that the property was “deliberately destroyed” in those cases is not a distinction favoring petitioners. If the government need not compensate for the destruction of property by our own forces “in times of imminent peril,” there is less reason to compensate for destruction by a common enemy of property which the government sought to defend.

The court below carefully limited its decision to the particular facts of this case, which plainly support the result under the principles of the foregoing cases. Petitioners present no new considerations warranting reappraisal of this Court’s decision in *Caltex*. Indeed, under the theory of “seizure and use” on which petitioners rely for recovery in this case, a fireman putting out a house fire would have “seized and used” the house, thereby creating a governmental liability to compensate for water damage.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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OCTOBER 1968.